

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Juan Bermea-Cepeda,)
Plaintiff,) Civil Action No. 8:11-cv-01231-JMC
v.)
Chaplain Chartier, Associate Chaplain)
Mims, Director Holt, Administrator)
Harrell Watts, and Warden,)
Defendants.)

)

OPINION AND ORDER

This matter is before the court on the Magistrate Judge's Report and Recommendation ("Report") [Doc. 58], filed on May 8, 2012, recommending the court grant the Motion to Dismiss [Doc. 40] filed by Defendants Chaplain Chartier, Associate Chaplain Mills, Director Holt, Administrator Harrell Watts, and Warden ("Defendants") and judgment for Defendants be entered. The Report also recommends that Plaintiff's Motion for Summary Judgment [Doc. 56] be denied. The Report sets forth in detail the relevant facts and legal standards on this matter which the court incorporates herein without a recitation.

STANDARD OF REVIEW

The Magistrate Judge's Report is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The court is charged with making a *de novo* determination of those

portions of the Report to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

Plaintiff was advised of his right to file objections to the Report [Doc. 58-1]. Plaintiff timely filed objections [Doc. 65] to the Report.

DISCUSSION

Failure to file specific written objections to the Report results in a party's waiver of the right to appeal from the judgment of the District Court based upon such recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

In reviewing Plaintiff's objections, the court finds that the majority of Plaintiff's objections are non-specific, unrelated to the dispositive portions of the Magistrate Judge's Report, or merely restate his claims. However, the court was able to discern the following objections as related to the issues addressed in the Report: 1) Defendants are not entitled to qualified or "sovereign immunity" because their actions violate an individual's constitutional rights; 2) Plaintiff's practice of his Santa Muerte religion is substantially burdened by Defendants denying him use of the chapel; and 3) Plaintiff has not conceded he is able to practice his religion within his cell.

After a thorough review of the Report and the record in this case, the court adopts the Magistrate Judge's Report. The Report provides a thorough discussion on Plaintiff's primary issues in this case: the violation of his religious rights and the qualified or sovereign immunity of Defendants. Plaintiff has presented no evidence or argument to this court as to why he is substantially burdened by the requirement that he exercise his religion in his cell. He has not

shown a substantial burden that is more than a mere inconvenience that “interfere[s] with a tenet or belief which is central to religious doctrine.” *Graham v. C.I.R.*, 822 F.2d 844, 851 (9th Cir. 1987) (citations omitted), *aff’d sub nom., Hernandez v. C.I.R.*, 490 U.S. 680 (1989). Furthermore, because Plaintiff has failed to establish a violation of his constitutional rights, Defendants are entitled to qualified immunity.

Accordingly, this court **ACCEPTS** the Magistrate Judge’s Report. It is therefore **ORDERED** that Defendants’ Motion to Dismiss [Doc. 40] is **GRANTED** and Plaintiff’s Motion for Summary Judgment [Doc. 56] is **DENIED**.

IT IS SO ORDERED.



J. Michelle Childs
United States District Judge

Greenville, South Carolina
June 21, 2012